SPECIFIC PERFORMANCE—STREET PAVING—CONTRACT WITH STREET RAILWAY—DAMAGES.—The Calumet Electric Street Railway Co. made a contract with the complainants, Fogg and Kinney, whereby the Railway Co. agreed to pave a certain street in front of the lots of the complainants. The consideration for the contract, it is alleged, was the damage which would result to the property from the building of the road. The complainants signed a petition to allow the road to be built. The road was built but the street has not been paved. This is a bill to enforce a specific performance of the agreement. *Held*, That the agreement cannot be specifically enforced, and that the court will not retain jurisdiction for the purpose of awarding damages. *Farson* v. *Fogg* (1903) — Ill. — 68 N. E. Rep. 755.

The city of Chicago has control of the streets and the Street Ry. Co. cannot pave such streets without the consent of the city, nor can a court of equity order specific performance in a suit to which the city is not a party. The parties must be presumed to have known that the company could not perform without the consent of the city. This is similar to a suit for specific performance of a contract to convey lands where the complainant knew at the time of filing the bill that the defendant had no title. In these cases it has always been held, that a court of equity will not retain jurisdiction for the purpose of assessing damages. The decision is supported by almost all of the cases where the question has been raised. *Hurlbut* v. *Kantzler*, 112 Ill. 482; *Doan, King & Co.* v. *Mauzey*, 33 Ill. 227; *Stickney* v. *Goudy*, 132 Ill. 213, 23 N. E. 1034. *Kennedy* v. *Hazleton*, 128 U. S. 667, 9 Sup. Ct. 202, 32 L. Ed, 576; *Mack* v. *McIntosh*, 181 Ill. 633, 54 N. E. 1019. POM. EQ. 237 and note. Though damages are sometimes allowed where the complainant did not know of the inability to perform at the time of bringing the suit. *Holland* v. *Anderson*, 38 Mo. 55, 58; *Wiswall* v. *McGovern*, 2 Barb. 270; *Cuff* v. *Dorland*, 55 Id. 481.

TELEGRAM—ERROR IN TRANSMITTING—TELEGRAPH COMPANIES—TORT LIMITING LIABILITY.—Plaintiff was a cotton broker in Vicksburg, selling through representatives in various states. One of the representatives, Reynolds & Co. of Providence, R. I., sent to the plaintiff an unrepeated cipher telegram, stating an offer received by them for 1000 bales of cotton at 8½ cents per pound, the price in cipher being designated by the word "alike." Through the negligence of the defendant company, the price word "alike" was changed to "alive" meaning 8⅝ cents. Plaintiff accepted the offer as delivered to him, to the extent of 500 bales at, as he supposed, 8⅝ cents per pound. The message was one sent upon blanks furnished by the Company and containing stipulations against liability in the case of unrepeated messages, except to the amount of the toll, and against all liability in the case of cipher messages. In this action against the Company, plaintiff alleges negligence, and claims damages one-eighth cent per pound on the 500 bales, amounting to $304.89, *Held*, that the telegraph company was liable for the tort and could not stipulate against its negligence for erroneously transmitting unrepeated or cipher messages as under a constitutional provision of the state they were common carriers. *Postal Tel. & Cable Co.* v. *Wells* (1903), —Miss. — 35 South. Rep. 190.

Telegraph companies, as a general rule, have not been held as common carriers and are not subject to the same liability, though they owe a duty to the public and must receive to the extent of their capacity, all messages clearly written, and transmit them for a reasonable compensation. They may therefore, limit their liability in a reasonable manner by means of reasonable rules and regulations. *Primrose* v. *W. U. Tel. Co.*, 154 U. S. 1; *Birkell* v. *Tel. Co.*, 103 Mich. 361; *McAndrews* v. *Elec. Tel. Co.*, 17 C. B. 3; *Camp* v. *Tel.*